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July 21, 2010

David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

VIA ELECTRONIC MAIL

Re: *Order among rule making procedures for the Reform Act*

Dear Secretary Stawick:

On behalf of the Working Group of Commercial Energy Firms (the “Working Group”), Hunton & Williams LLP submits this letter concerning the many rulemakings that the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Reform Act”) requires the Commodity Futures Trading Commission (“CFTC” or “Commission”) to conduct within one year of the Reform Act’s enactment.

The Working Group is a diverse group of commercial firms in the energy industry whose primary business activity is the physical delivery of one or more energy commodities to customers, including industrial, commercial and residential consumers. Members of the Working Group are energy producers, marketers and utilities. The Working Group considers and responds to requests for public comment regarding legislative and regulatory developments with respect to the trading of energy commodities, including derivatives and other contracts that reference energy commodities.

I. GENERAL OBSERVATIONS AND RECOMMENDATIONS.

The Reform Act, namely Title VII thereof, extensively reshapes the legal framework for the use and trading of derivatives. The scope of this legislation is dramatic, covering everything from interest rate swaps to commodity swaps to credit default swaps. The Reform Act, however, has left many of the critical details to be provided by the CFTC and other federal regulators.

The CFTC and staff, along with other federal regulators, have an enormous task to implement the Reform Act within a relatively short period of time. There are a plethora of rulemakings, studies and inter-agency actions for the CFTC and staff to complete within one year of enactment of the Reform Act. These actions coincide with other CFTC initiatives, such

as the rule making for position limits for contracts referencing certain energy commodities. At the same time, the CFTC has a large and diversified constituency that will be materially affected by the rules it promulgates. For many of these constituents, the CFTC's rules are critical to planning, modification and operation of their core business. For the commercial energy firms represented by the OTC Working Group, these rules are critical for the continuation of price and risk management practices to ensure an affordable, available supply of energy.

The Working Group offers the following general suggestions to the CFTC and staff.

1. The CFTC should engage in rulemakings in a staggered process. Definitional issues should be addressed first, and more technical issues should be reserved for the end of the schedule. The calendar should not be set by placing the mandatory rulemakings ahead of the discretionary ones because many of the discretionary ones are key to determining which entities will be covered by the mandatory rulemakings.
2. Rules for the more critical items should be published well ahead of the effective date of the Reform Act. The CFTC and other federal regulators will provide a tremendous service to the entire derivatives markets if they afford participants meaningful time to plan and implement changes to their derivatives trading practices and portfolios ahead of the effective date of the Reform Act.
3. Every rulemaking should afford adequate public notice and sufficient time for considered comments. No expedited rulemakings should be scheduled. Regulated industry participation will be key to developing rules and regulations that will work for the OTC commodities market.
4. Public scheduling of rulemakings is critical to the full participation of all stakeholders in the rulemaking process. Like the CFTC and its staff, these stakeholders will be dedicating substantial time and resources in the rulemakings process. A timely publication of its rulemaking schedule well in advance of the public comment periods will facilitate the participation by all stakeholders resulting in the CFTC receiving more thorough and robust comments.
5. The CFTC, when working with other federal regulators towards harmonizing standards, should employ a transparent process, the hallmarks of which are public notice of proposed regulations and the opportunity for stakeholders to provide comment.

The Working Group offers the following recommendations as to the timing and order of select rulemakings. These rulemakings are expected to be the most critical for all stakeholders preparing for the Reform Act becoming effective. The list of items, however, is not exhaustive. There are other rulemakings and actions contemplated by the Reform Act that are of interest to the members of the Working Group,¹ but not as critical for the transition to a new legal paradigm regarding price and risk management for affordable and available energy.

II. IMMEDIATE PHASE.

The rulemakings identified below are the most critical, as they will impact how all market participants are affected by the Reform Act and the CFTC rules promulgated thereunder. It would be helpful to all stakeholders for the CFTC to release a notice of proposed rulemaking for each identified item as soon as practicable. The Working Group recommends a 60-day comment period, followed by a 15-day period for reply comments, followed by a 15-day deliberation period. Then, the CFTC should submit a revised proposed rule for another 15-day comment period, followed by a 15-day deliberation period, after which the CFTC should publish a final rule. This schedule should result in the CFTC providing critical guidance to the market within approximately 90 to 120-days of the Reform Act's enactment.

1. Definition of "Swap Dealer" and factors for the *de minimis* exception (Sec. 712, 721)
2. Definition of "Major Swap Participant" and "Substantial Position" (Sec. 712, 721)
3. Definition of "Swap" (Sec. 712)
4. Definition of "Futures Commission Merchant" (Sec. 721)
5. Definition of "Floor Broker" and "Floor Trader" (Sec. 721)
6. Record keeping, procedure and data elements for reporting of non-cleared swaps (Sec. 728, 729)
7. Criteria for real time public reporting (Sec. 727)
8. Define "commercial risk" for clearing exception (Sec. 721)

¹ For example, the members of the Working Group will be particularly interested in the memorandum of understanding to be drafted between the CFTC and the Federal Energy Regulatory Commission.

III. SECOND PHASE.

The Working Group recommends that the CFTC submit proposed rules on the following items within 45 days of the Reform Act's enactment. These rules should have a 60-day comment period, 15-day reply period, and sufficient deliberative period. The derivatives markets would benefit if these rules were in place at least 180 days before the effective date of the Reform Act.

1. Determination of margin requirements for non-bank Swap Dealers and non-bank Major Swap Participants (including the use of non-cash collateral) (Sec. 731)
2. Determination of capital requirements for non-bank Swap Dealers and non-bank Major Swap Participants (Sec. 731)
3. Clarifications of necessary corporate actions for use of clearing exception. (Sec. 723)
4. Establishment of position limit rules (Sec. 737)
5. Rules to establish criteria to determine if swap was structured to evade clearing requirements (Sec. 723)

IV. THIRD PHASE.

The Working Group recommends that the CFTC submit proposed rules on the following items within 90 days of the Reform Act's enactment. These rules should have a 90-day comment, reply and deliberation period. The derivatives markets would benefit if these rules were in place at least 90 days prior to the effective date of the Reform Act.

1. Registration process for Swap Dealers and Major Swap Participants (Sec. 731)
2. Recordkeeping and reporting for non-bank Swap Dealers and non-bank Major Swap Participants (Sec. 731)
3. Documentation standards, including disclosure standards, for non-bank Swap Dealers and non-bank Major Swap Participants (Sec. 731)
4. Conflict of interest policies for Swap Dealers and Major Swap Participants (Sec. 731)
5. Record keeping and reporting information for large swap traders (Sec. 730)
6. Other "business conduct standards" and duties applicable to Swap Dealers and Major Swap Participants (Sec. 731)

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The Working Group looks forward to working with the CFTC and staff throughout the rulemaking process. Thoughtful consideration of public input of all stakeholders will result in well implemented regulation which can strengthen the derivatives markets and benefit regulators, market participants and U.S. energy consumers.

Respectfully submitted,

/s/ R. Michael Sweeney, Jr.

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David T. McIndoe
Mark W. Menezes

*Counsel for the Working Group of
Commercial Energy Firms*

cc: Honorable Gary Gensler, Chairman
Honorable Scott D. O'Malia, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Michael Dunn, Commissioner
Honorable Bart Chilton, Commissioner
Daniel Berkovitz, General Counsel
Stephen Sherrod, Acting Deputy Director, Market Surveillance Section